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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1069

GREAT LAKES DREDGE & DOCK COMPANY,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS, AND BRIEF IN SUPPORT THEREOF.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Great Lakes Dredge & Dock Company, by William S. Hammers, its counsel, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled cause on January 7, 1946.

Opinion Below

The opinion of the Court of Claims (R. 34-39) is not yet officially reported.

Jurisdiction

The judgment of the Court of Claims was entered on January 7, 1946 (R. 39). The jurisdiction of this Court

is invoked under Section 3 (b) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 939, as amended by the Act of May 22, 1939, c. 140, 53 Stat. part 2, 752.

Contract Provisions Involved

The case involves two provisions of the specifications which were made a part of the contract, to-wit:

> 1-08. *Physical Data.* * * * Owing to the rapid currents the material in the dredged cuts is eroded when it is disturbed by the process of dredging. During the progress of recent contracts the prescribed cuts have been secured by the contractor after the removal of about 75 percent of the estimated quantity of material in the cut, scow measurement, including overdepth. The quantities of materials given in the specifications, are the estimated pay yardages and are 75 percent of the estimated quantities, scow measurement, that must be removed from the cuts.
>
> 4-03. Overdepth and Side Slopes. * * *
>
> * * * * * * *
>
> The contracting officer will prescribe the overcuts to be made to prevent the encroachment of material from the sides of the dredge cut, and material actually removed on his order from the prescribed overcuts, whether dredged in original position, or after having fallen into the cut, will be estimated and paid for. Material taken from beyond the limits as extended in this paragraph will be deducted from the total amount dredged as excessive overdepth dredging or excessive side-slope dredging and will not be paid for.

Summary Statement of the Matter Involved

The suit grows out of a contract dated June 6, 1936, between petitioner and the United States for performing certain dredging work in the Cape Cod Canal and in Hog

Island Channel in Buzzards Bay, Massachusetts, including the dredging of a channel leading into Onset Bay. (R. 11)

The work was commenced on July 1, 1936, and completed on August 16, 1938. (R. 11)

On the monthly estimates of the quantity of material for which petitioner was entitled to receive payment, the contracting officer deducted a total of 443,393 cubic yards, scow measurement, at the contract unit price of 34.25¢ per cubic yard, on the premise that, under paragraph 4-03 of the specifications, above set out, 258,005 cubic yards thereof consisted of excessive side-slope dredging, and 185,388 cubic yards consisted of excessive overdepth dredging, that is, material taken from beyond the contract limits as extended by the aforesaid paragraph of the specifications. (R. 26)

The suit was instituted to recover the sum of $151,862.11 as the balance due petitioner under the contract for the dredging and disposal of the aforesaid 443,393 cubic yards, scow measurement, of material at the contract unit price of 34.35¢ per cubic yard. (R. 8-9, 34)

The estimated yardage to be removed above the required depth was 4,135,700 cubic yards, scow measurement, and the maximum amount of allowable overdepth dredging was estimated at 807,200 cubic yards, scow measurement. (R. 11) It was stated in paragraph 1-08 of the specifications, above set out, that the quantities of materials given in the specifications were the estimated pay yardages, or 75% of the estimated quantities, scow measurement, that must be removed from the cuts, attention being invited to the fact that during the progress of recent contracts it had been found that the rapid currents eroded and carried away 25% of the material.

The specifications required that the channel leading into Onset Bay be dredged to a depth of 17 feet over a

bottom width of 100 feet, and in Cape Cod Canal and Hog Island Channel to a depth of 32 feet over a bottom width of 315 feet. (R. 34) As to the sides, or side slopes, no reference was made to dredging, other than as indicated in paragraph 4-03 above, but the contract drawings had indicated thereon permissible side-slopes of 1 foot vertical to 2½ feet horizontal, the material lying above such slope lines being included in the total quantity of estimated pay yardage available for removal. (R. 11-12, 34)

Paragraph 2-01 of the specifications (R. 12) provided that the location and limits of the work to be done would be plainly indicated by the contracting officer or his agents by stakes and ranges, and that was done, the dredging operations in the side cuts being kept far enough inside the area limits to prevent digging beyond the specified limit lines. (Findings 22, R. 29, and 26, R. 31)

The contracting officer did not prescribe any overcuts to be made to prevent the encroachment of material from the sides (R. 37) but did nevertheless deduct as excessive side-slope dredging the 258,005 cubic yards of material that slid or fell into the channel and was removed by the dredge or the currents.

The quantity of material to be deducted as excessive dredging was determined in place measurement by surveys of the bottom and sides of the channel and converted into scow measurement in the ratio provided in the specifications for such purpose, but without any adjustment being made for the 25% removal attributable to erosion and the rapid currents.

The court below held petitioner not entitled to the relief sought and dismissed the petition.

Questions Presented

1. Whether the failure on the part of the contracting officer to prescribe the overcuts to be made to prevent the encroachment of material from the sides of the dredged cut, as provided in paragraph 4-03 of the contract specifications, constitutes a breach of the contract?

2. In the absence of any prescription on the part of the contracting officer for the dredging of overcuts to prevent the encroachment of material from the sides, is petitioner properly chargeable with any deduction for excessive side-slope dredging?

3. Where the work is performed within the limits of the stakes and ranges set by the contracting officer or his agents and within the bottom limits of the prescribed area, is petitioner properly chargeable with excessive side-slope dredging for any material that encroached on the channel and was removed by dredging or by erosion and current action?

4. Whether respondent erred in not reducing the determined quantity of excessive overdepth dredging by 25% to eliminate that which was not dredged and placed in the scows for measurement and payment but by the known factor of erosion and current action?

Reasons for Granting the Writ

Petitioner respectfully represents, as reasons for granting the writ, that the Court of Claims has in this case decided important federal questions of law in a way probably in conflict with applicable decisions of this Court; and has so far departed from the accepted and usual course of judicial interpretation of such questions with respect to government contracts as to call for an exercise of this court's power of supervision.

Conclusion

For the reasons stated herein it is respectfully submitted that this petition for a writ of certiorari should be granted and the decision of the Court of Claims reviewed.

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